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SENATE BILL 316

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MANNY M. ARAGON

AN ACT

RELATING TO FLOOD CONTROL; AMENDING THE ARROYO FLOOD CONTROL ACT TO AUTHORIZE THE AUTHORITY TO USE ITS REAL PROPERTY FOR PUBLIC RECREATION AND TRANSPORTATION UNDER CERTAIN CONDITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-16-22 NMSA 1978 (being Laws 1963, Chapter 311, Section 22, as amended) is amended to read:

"72-16-22. ADDITIONAL POWERS OF THE AUTHORITY. -- The authority may exercise the following duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare:

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- 1 A. perpetual existence and succession;
- 2 B. adopt, have and use a corporate seal and alter
- 3 the same at pleasure;
- 4 C. sue and be sued and be a party to suits,
- 5 actions and proceedings;
- 6 D. commence, maintain, intervene in, defend,
- 7 compromise, terminate by settlement or otherwise, and
- 8 otherwise participate in, and assume the cost and expense of,
- 9 any and all actions and proceedings now or hereafter begun and
- 10 appertaining to the authority, its board, its officers, agents
- 11 or employees, or any of the authority's duties, privileges,
- 12 immunities, rights, liabilities and disabilities, or the
- 13 authority's flood control system, other property of the
- 14 authority or any project;
- 15 E. enter into contracts and agreements, including
- 16 but not limited to contracts with the federal government, the
- 17 state and any other public body;
- 18 F. borrow money and issue securities evidencing
- 19 any loan to or amount due by the authority, provide for and
- 20 secure the payment of any securities and the rights of the
- 21 holders thereof, and purchase, hold and dispose of securities,
- 22 as hereinafter provided;
- 23 G. refund any loan or obligation of the authority
- 24 and issue refunding securities to evidence such loan or
- 25 obligation without any election;

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1 H. purchase, trade, exchange, encumber and
2 otherwise acquire, maintain and dispose of property and
3 interests therein, and, to the extent not inconsistent with
4 other provisions of the Arroyo Flood Control Act, allow the
5 use of real property owned by the authority for public
6 recreation or transportation under suitable licensing or other
7 arrangements with the state or other local public bodies ;

8 I. levy and cause to be collected general (ad
9 valorem) taxes on all property subject to property taxation
10 within the authority; provided that the total tax levy,
11 excluding any levy for the payment of any debt of the
12 authority authorized pursuant to the Arroyo Flood Control Act,
13 for any fiscal year shall not exceed an aggregate total of
14 fifty cents (\$.50), or any lower amount required by operation
15 of the rate limitation provisions of Section 7-37-7.1 NMSA
16 1978 upon this tax levy, for each one thousand dollars
17 (\$1,000) of net taxable value, as that term is defined in the
18 Property Tax Code, by certifying, on or before the fifteenth
19 day of July in each year in which the board determines to levy
20 a tax, to the board of county commissioners of Bernalillo
21 county, or by such other date as the laws of the state may
22 prescribe to such other body having authority to levy taxes
23 within each county wherein the authority has any territory,
24 the rate so fixed, with directions that, at the time and in
25 the manner required by law for levying taxes for other

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1 purposes, such body having authority to levy taxes shall levy
2 the tax upon the net taxable value of all property subject to
3 property taxation within the authority, in addition to such
4 other taxes as may be levied by such body, as provided in
5 Sections 72-16-23 through 72-16-27 NMSA 1978. No taxes may be
6 levied and collected for any purpose, or any contract made,
7 until a bond issue has been submitted to and approved by the
8 taxpaying electors as hereinafter provided;

9 J. hire and retain officers, agents, employees,
10 engineers, attorneys and any other persons, permanent or
11 temporary, necessary or desirable to effect the purposes
12 hereof, defray any expenses incurred thereby in connection
13 with the authority, and acquire office space, equipment,
14 services, supplies, fire and extended coverage insurance, use
15 and occupancy insurance, workmen's compensation insurance,
16 property damage insurance, public liability insurance for the
17 authority and its officers, agents and employees, and other
18 types of insurance, as the board may determine; provided,
19 however, that no provision herein authorizing the acquisition
20 of insurance shall be construed as waiving any immunity of the
21 authority or any director, officer or agent thereof and
22 otherwise existing under the laws of the state;

23 K. condemn property for public use;

24 L. acquire, improve, equip, hold, operate, maintain
25 and dispose of a flood control system, storm sewer facilities,

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1 project and appurtenant works, or any interest therein, wholly
2 within the authority, or partially within and partially
3 without the authority, and wholly within, wholly without or
4 partially within and partially without any public body all or
5 any part of the area of which is situated within the
6 authority;

7 M. pay or otherwise defray the cost of any project;

8 N. pay or otherwise defray and contract so to pay or
9 defray, for any term not exceeding fifty years, without an
10 election, except as hereinafter otherwise provided, the
11 principal of, any interest on, and any other charges
12 appertaining to, any securities or other obligations of the
13 federal government, any public body or person incurred in
14 connection with any such property so acquired by the
15 authority;

16 O. establish and maintain facilities within or
17 without the authority, across or along any public street,
18 highway, bridge, viaduct or other public right-of-way, or in,
19 upon, under or over any vacant public lands, which public
20 lands are now, or may become, the property of the state, or
21 across any stream of water or water course, without first
22 obtaining a franchise from the municipality, county or other
23 public body having jurisdiction over the same; provided that
24 the authority shall cooperate with any public body having such
25 jurisdiction, shall promptly restore any such street, highway,

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1 bridge, viaduct or other public right-of-way to its former
2 state of usefulness as nearly as may be and shall not use the
3 same in such manner as to impair completely or unnecessarily
4 the usefulness thereof;

5 P. deposit any money of the authority, subject to
6 the limitations in Article 8, Section 4 of the constitution of
7 New Mexico, in any banking institution within or without the
8 state and secured in such manner and subject to such terms and
9 conditions as the board may determine, with or without the
10 payment of any interest on any such deposit;

11 Q. invest any surplus money in the authority
12 treasury, including such money in any sinking or reserve fund
13 established for the purpose of retiring any securities of the
14 authority, not required for the immediate necessities of the
15 authority, in its own securities or in federal securities, by
16 direct purchase of any issue of such securities, or part
17 thereof, at the original sale of the same, or by the
18 subsequent purchase of such securities;

19 R. sell any such securities thus purchased and held,
20 from time to time;

21 S. reinvest the proceeds of any such sale in other
22 securities of the authority or in federal securities, as
23 provided in Subsection Q of this section;

24 T. sell in season from time to time such securities
25 thus purchased and held, so that the proceeds may be applied

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1 to the purposes for which the money with which such securities
2 were originally purchased was placed in the treasury of the
3 authority;

4 U. accept contributions or loans from the federal
5 government for the purpose of financing the planning,
6 acquisition, improvement, equipment, maintenance and operation
7 of any enterprise in which the authority is authorized to
8 engage, and enter into contracts and cooperate with, and
9 accept cooperation and participation from, the federal
10 government for these purposes;

11 V. enter, without any election, into joint operating
12 or service contracts and agreements, acquisition, improvement,
13 equipment or disposal contracts or other arrangements, for any
14 term not exceeding fifty years, with the federal government,
15 any public body or any person concerning storm sewer
16 facilities, or any project, whether acquired by the authority
17 or by the federal government, any public body or any person,
18 and accept grants and contributions from the federal
19 government, any public body or any person in connection
20 therewith;

21 W. enter into and perform, without any election,
22 when determined by the board to be in the public interest and
23 necessary for the protection of the public health, contracts
24 and agreements, for any term not exceeding fifty years, with
25 the federal government, any public body or any person for the

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1 provision and operation by the authority of storm sewer
2 facilities;

3 X. enter into and perform, without any election,
4 contracts and agreements with the federal government, any
5 public body or any person for or concerning the planning,
6 construction, lease or other acquisition, improvement,
7 equipment, operation, maintenance, disposal, and the financing
8 of any project, including but not necessarily limited to any
9 contract or agreement for any term not exceeding fifty years;

10 Y. enter upon any land, make surveys, borings,
11 soundings and examinations for the purposes of the authority,
12 and locate the necessary works of any project and roadways and
13 other rights-of-way appertaining to any project herein
14 authorized; acquire all property necessary or convenient for
15 the acquisition, improvement or equipment of such works;

16 Z. cooperate with and act in conjunction with the
17 state, or any of its engineers, officers, boards, commissions
18 or departments, or with the federal government or any of its
19 engineers, officers, boards, commissions or departments, or
20 with any other public body or any person in the acquisition,
21 improvement or equipment of any project for the controlling of
22 flood or storm waters of the authority, or for the protection
23 of life or property therein, or for any other works, acts or
24 purposes provided for herein, and adopt and carry out any
25 definite plan or system of work for any such purpose;

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1 AA. cooperate with the federal government or any
2 public body by an agreement therewith by which the authority
3 may:

4 (1) acquire and provide, without cost to the
5 operating entity, the land, easements and rights-of-way
6 necessary for the acquisition, improvement or equipment of the
7 flood control system or any project;

8 (2) hold and save harmless the cooperating
9 entity free from any claim for damages arising from the
10 acquisition, improvement, equipment, maintenance and operation
11 of the flood control system or any project;

12 (3) maintain and operate any project in
13 accordance with regulations prescribed by the cooperating
14 entity; and

15 (4) establish and enforce flood channel limits
16 and regulations, if any, satisfactory to the cooperating
17 entity;

18 BB. carry on technical and other investigations of
19 all kinds, make measurements, collect data and make analyses,
20 studies and inspections pertaining to control of floods, sewer
21 facilities, and any project, both within and without the
22 authority, and for this purpose the authority has the right of
23 access through its authorized representative to all lands and
24 premises within the state;

25 CC. have the right to provide from revenues or other

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1 available funds an adequate fund for the improvement and
2 equipment of the authority's flood control system or of any
3 parts of the works and properties of the authority;

4 DD. prescribe and enforce reasonable rules and
5 regulations for the prevention of further encroachment upon
6 existing defined waterways, by their enlargement or other
7 modification, for additional waterway facilities to prevent
8 flooding;

9 EE. require any person desiring to make a connection
10 to any storm water drain or flood control facility of the
11 authority or to cause storm waters to be emptied into any
12 ditch, drain, canal, floodway or other appurtenant structure
13 of the authority firstly to make application to the board to
14 make the connection, to require the connection to be made in
15 such manner as the board may direct;

16 FF. refuse, if reasonably justified by the
17 circumstances, permission to make any connection designated in
18 Subsection DD or Subsection EE of this section;

19 GG. make and keep records in connection with any
20 project or otherwise concerning the authority;

21 HH. arbitrate any differences arising in connection
22 with any project or otherwise concerning the authority;

23 II. have the management, control and supervision of
24 all the business and affairs appertaining to any project
25 herein authorized, or otherwise concerning the authority, and

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1 of the acquisition, improvement, equipment, operation and
2 maintenance of any such project;

3 JJ. prescribe the duties of officers, agents,
4 employees and other persons and fix their compensation;
5 provided that the compensation of employees and officers shall
6 be established at prevailing rates of pay for equivalent work;

7 KK. enter into contracts of indemnity and guaranty,
8 in such form as may be approved by the board, relating to or
9 connected with the performance of any contract or agreement
10 which the authority is empowered to enter into under the
11 provisions hereof or of any other law of the state;

12 LL. provide, by any contract for any term not
13 exceeding fifty years, or otherwise, without an election:

14 (1) for the joint use of personnel, equipment
15 and facilities of the authority and any public body, including
16 without limitation public buildings constructed by or under
17 the supervision of the board of the authority or the governing
18 body of the public body concerned, upon such terms and
19 agreements and within such areas within the authority as may
20 be determined, for the promotion and protection of health,
21 comfort, safety, life, welfare and property of the inhabitants
22 of the authority and any such public body; and

23 (2) for the joint employment of clerks,
24 stenographers and other employees appertaining to any project,
25 now existing or hereafter established in the authority, upon

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1 such terms and conditions as may be determined for the
2 equitable apportionment of the expenses therefrom resulting;

3 MM obtain financial statements, appraisals,
4 economic feasibility reports and valuations of any type
5 appertaining to any project or any property pertaining
6 thereto;

7 NN. adopt any resolution authorizing a project or
8 the issuance of securities, or both, or otherwise appertaining
9 thereto, or otherwise concerning the authority;

10 OO. make and execute a mortgage, deed of trust,
11 indenture or other trust instrument appertaining to a project
12 or to any securities herein authorized, or to both, except as
13 provided in Subsection PP of this section and in Section
14 72-16-54 NMSA 1978;

15 PP. make all contracts, execute all instruments and
16 do all things necessary or convenient in the exercise of the
17 powers granted herein, or in the performance of the
18 authority's covenants or duties, or in order to secure the
19 payment of its securities; provided, no encumbrance, mortgage
20 or other pledge of property, excluding any money, of the
21 authority is created thereby and provided no property,
22 excluding money, of the authority is liable to be forfeited or
23 taken in payment of such securities;

24 QQ. have and exercise all rights and powers
25 necessary or incidental to or implied from the specific powers

1 granted herein, which specific powers shall not be considered
2 as a limitation upon any power necessary or appropriate to
3 carry out the purposes and intent hereof; and

4 RR. exercise all or any part or combination of the
5 powers herein granted. "

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 5, 1998
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8 Mr. President:
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 316
13

14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 CONSERVATION COMMITTEE.
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19 Respectfully submitted,
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Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

S0316CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 10, 1998

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8 Mr. President:

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10 Your CONSERVATION COMMITTEE, to whom has been referred

11
12 SENATE BILL 316

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14 has had it under consideration and reports same WITHOUT

15
16 RECOMMENDATION.

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18 Respectfully submitted,

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23 Michael S. Sanchez, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Davis, Eisenstadt, Kysar, Macias

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 18, 1998
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 316
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, and thence referred to the
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,
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22 Thomas P. Foy, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 19

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

6
7 Date _____

8
9 The roll call vote was 7 For 0 Against

10 Yes: 7

11 Excused: Alwin, Garcia, King, Larranaga, Mallory, Sanchez

12 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3
4 February 18, 1998

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom has
10 been referred

11 SENATE BILL 316

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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

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16 Respectfully submitted,

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21 Max Coll, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Senate Bill 316

Page 21

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

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7 Date _____

8
9 The roll call vote was 15 For 3 Against

10 Yes: 15

11 No: Bird, Buffett, Pearce

12 Excused: None

13 Absent: None

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